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Exception noted and filed

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Exception Noted and Filed

THE May number of the Bulletin contained an article entitled "Relating to Dividends," in which the following statement was made:

"It may be said probably without fear of contradiction, that cumulative dividend preference rights do not warrant or justify a corporation in setting up or stating any dividend liability in favor of stockholders having such rights, until the dividend has been declared by the directors."

It may reasonably be expected that a broad general statement of this character will be carefully read by the thoughtful members of our organization, and critically tested by application to all sorts of special cases, with a view to challenging the statement in the event that it fails to fit any given case.

As a result of such critical tests applied at various points throughout the organization, one reader has found what he believes to be an exception to the rule. The exception is based on the following excerpts from a law of the state of Michigan, which law was effective from 1903 to May 10, 1917, in which latter year the lines quoted were omitted entirely from a superseding act:

"And the holder of such preferred stock shall be entitled to a fixed dividend payable quarterly, half-yearly, or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed eight per cent per annum, before any dividend shall be set apart or paid on the common stock."

and further:

"Provided, always, if at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent thereof, or any dividend *due* on the preferred stock shall remain unpaid for sixty days, then holders of the preferred stock shall have an equal right with the common stock shares, etc."

This wording is, by the challenger of

the general statement, interpreted to imply that there is no necessity for the declaration or setting apart of the stated dividend on preferred stock, since preferred dividends are expressly stated in the law to be cumulative, due, and payable at fixed dates expressed in the certificate; and that an actual liability exists, even though the dividend has not been declared, and should be taken cognizance of in the accounting records. It is further stated that this liability should be considered as direct, if the earnings have been sufficient to cover, and contingent if the profits have been insufficient; and that the dividends on this preferred stock are practically equivalent in character to interest on bonds.

We do not agree with the contention set up by the challenger. We do not consider that this case constitutes an exception to the rule; and our interpretation of the extract from the law is that it merely intended to convey certain preferred rights as to dividends which would come ahead of any distributions to common stockholders or declarations of dividends on the common shares. The crux of the whole situation, in our opinion, is found in the word "before."

The discussion is possibly only an academic one, since there is some question, because of the omission of the above extract, first quoted, from Act 254 of 1917, amending Act 232 of 1903, as to whether or not the preferred stock provisions referred to carry forward, even for corporations organized between 1903 and 1917.

At a meeting held in Kansas City on May 23, 1922, under the auspices of the Kansas City Young Men's Christian Association, Mr. Page Lawrence delivered an address on "Accountancy." The meeting was one of a series in a campaign in the interest of vocational training.